

ORIGINAL



0000113951

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES - CHAIRMAN

GARY PIERCE

PAUL NEWMAN

SANDRA D. KENNEDY

BOB STUMP

IN THE MATTER OF THE REVIEW AND
POSSIBLE REVISION OF ARIZONA
UNIVERSAL SERVICE FUND RULES, ARTICLE
12 OF THE ARIZONA ADMINISTRATIVE
CODE.

Docket No. RT-00000H-97-0137

IN THE MATTER OF THE INVESTIGATION OF
THE COST OF TELECOMMUNICATIONS
ACCESS

Docket No. T-00000D-00-0672

Arizona Corporation Commission

DOCKETED

JUL -9 2010

INITIAL BRIEF

OF

JOINT CLECS

DOCKETED BY

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

July 9, 2010

2010 JUL -9 P 3:43

RECEIVED

TABLE OF CONTENTS

1	Introduction.....	1
2		
3	I. Access Charge Reform in Arizona is Premature and Unnecessary	3
4	A. National Broadband Plan	3
5	B. Lack of Compelling Need for Immediate Arizona-Specific Reform.....	4
6	C. Potential Inconsistent or Contrary Results.....	6
7	II. Procedural Issues Regarding Access Charge Reform.....	6
8	A. Reduction of Rates Requires Certain Process and Procedures	7
9	B. Notice and Opportunity to be Heard for Affected Parties	7
10	III. Appropriate Policies for Access Charge Reform.....	8
11	A. Address Rural LEC Access Rates First	8
12	B. Opportunity to Prove Rates for Specific Carrier.....	9
13	C. Transition Period for New Rates	11
14	D. Opportunity to Replace Lost Revenue	12
15	E. Ensure Access Charge Reductions Benefit Customers.....	14
16	IV. Appropriate Policies for AUSF Reform	15
17	V. Additional Issues Identified in Procedural Order	16
18	A. Issue 4: Should carriers be permitted to contract for access rates that differ from their tariffed rates?	16
19	B. Issues 7 – 10. AUSF Process Issues.....	16
20	VI. If the Commission Reforms Intrastate Access Charges, It Should Also Establish the Terminating Rate for Intrastate, IntraMTA Wireless Calls	17
21	Conclusion	17
22		
23		
24		
25		
26		
27		

1 Eschelon Telecom of Arizona, Inc., Mountain Telecommunications, Inc., Electric
2 Lightwave, LLC and McLeod USA Telecommunications Services, Inc. dba PAETEC Business
3 Services, through undersigned counsel, hereby submits its Initial Brief on behalf of Eschelon
4 Telecom of Arizona, Inc., Mountain Telecommunications, Inc., Electric Lightwave, LLC, McLeod
5 USA Telecommunications Services, Inc. dba PAETEC Business Services, tw telecom of arizona
6 llc and XO Communications Services, Inc. ("Joint CLECS").

7 **Introduction**

8 The stated purpose of the evidentiary hearing in this docket is to "allow the Commission to
9 consider and make policy determinations that may give rise to a rulemaking process and/or carrier
10 specific proceedings." September 29, 2009 Procedural Order (Docket Nos. RT-00000H-97-137,
11 T-00000D-00-0672) at 4. The parties have provided substantial information to the Commission to
12 assist in the stated purposes of the consolidated dockets: possible revisions to the Arizona
13 Universal Fund ("AUSF") and a comprehensive examination of the cost of telecommunications
14 access. *Id.* at 1. These dockets, together with the recent evidentiary hearing, are not rate
15 proceedings, nor has a notice of proposed rule-making been issued in either docket. Both dockets
16 are in focused on generating policy recommendations for future Commission proceedings on the
17 AUSF and/or carrier access rates. Moreover, many potentially affected parties were not formal
18 parties to these generic dockets. The information provided at the hearing does provide an
19 overview of and basis for recommendations on how to proceed on AUSF and access charge
20 reform. However, before there are any changes to the AUSF rules or to the access charges of
21 specific Arizona telecommunications carriers, there must be additional proceedings to meet legal
22 and due process requirements.

23 Joint CLECs believe it is premature and would be inefficient for the Commission to take
24 any further substantive steps regarding access charge or AUSF reform at this time. The FCC has
25 issued its National Broadband Plan ("NBP" or "Plan"), which will modify the landscape of
26 universal service and intercarrier compensation such as access charges. The FCC has set a detailed
27 schedule for this reform and is already moving forward with rulemakings and other proceedings.

1 Given the proposed scope of the FCC NBP, it does not make sense for Arizona to devote resources
2 to rulemakings or other proceedings that may be contrary to, or incompatible with, the Plan and its
3 resulting federal rules and programs. Indeed, given the due process concerns implicated by any
4 mandated access charge reduction and the procedural requirements of rulemakings, the
5 Commission may end up chasing the FCC reform, rather than getting ahead of the curve.

6 The record also does not contain any compelling need for access charge reform at this time.
7 The only immediate beneficiary of reduced intrastate access charge rates are IXCs, such as AT&T.
8 Access charge reductions result in reduced expenses that immediately drop to the IXCs' bottom
9 line. It is unclear if and when end-user customers would see any reductions in their intrastate long
10 distance charges purportedly linked to access charge reductions. It does appear that there is
11 general consensus that LECs should have an opportunity to recover lost access charge revenues –
12 either through the AUSF or increasing other rates (options generally unavailable to CLECs).
13 Either way, consumers may pay more without ever seeing any significant reduction in IXC
14 intrastate long distance charges.

15 Should the Commission press forward with these dockets, there are both procedural and
16 substantive issues that should shape subsequent proceedings. First, any reduction of existing
17 intrastate access charge rates requires proper due process. All affected parties need sufficient
18 opportunity to be heard to ensure that the reduction in rates is not confiscatory or illegal. It would
19 be arbitrary to simply dictate that all CLEC intrastate switched access rates be set at Qwest's
20 current rate. A rulemaking that sets a default rate may be sufficient, provided that each affected
21 carrier has the opportunity to prove that its intrastate access rate should be higher than the default
22 rate. Providing such an opportunity is the only way to overcome the arbitrariness of capping all
23 LEC's rates based on the ILEC rate when, if given the opportunity as required by law, a LEC may
24 be able to prove that Qwest's rate does not permit the LEC to recover its cost of providing
25 intrastate switched access services in the State of Arizona.

26 Second, any mandatory reductions to access rates should be implemented over time, as
27 opposed to an immediate flash cut to the final rate. This "glide path" will provide affected parties

1 the opportunity to modify business plans, to meet legal obligations (such as long term contracts)
2 and to develop replacement revenue sources.

3 Third, the Commission should ensure that any reductions to access charge rates are realized
4 by end user customers of interexchange carriers. Without such a requirement, access charge
5 reform will simply provide a direct and immediate transfer of wealth from competitive LECs and
6 their end users to IXC's. The bulk of this wealth transfer will accrue to the largest IXC's, which are
7 the largest and most profitable companies in the telecommunications sector.

8 Fourth, any modifications to the funding mechanism underlying the AUSF must ensure that
9 no carrier class or customer class is inequitably burdened.

10 Finally, Joint CLECs submit that, to the extent that the Commission presses forward with
11 access charge reform, the initial phase should address the rural ILECs.

12 **I. Access Charge Reform in Arizona is Premature and Unnecessary.**

13 **A. National Broadband Plan.**

14 On March 16, 2010, the FCC issued its National Broadband Plan. The Plan reflects a
15 potential sea change on many of the basic elements of communications in the United States. The
16 FCC is moving forward to create incentives for universal availability and adoption of broadband.¹
17 The Plan contemplates significant changes to federal USF programs in order to focus on
18 broadband support.² A key element of this aspect of the NBP is intercarrier compensation reform.³
19 The Plan includes several recommendations directed at intercarrier compensation, including
20 intrastate switched access rates. For example:

- 21 1. In Stage One (2010-11), the FCC "should adopt a framework for long-term
22 intercarrier compensation (ICC) reform that creates a glide path to eliminate per-
23 minute charges while providing carriers an opportunity for adequate cost recovery,
24 and establish interim solutions to address arbitrage."⁴ This national framework

25 ¹ NBP at xiii; NBP, Chap. 8.

26 ² NBP, Chap. 8.3.

27 ³ NBP at 142.

⁴ NBP at 148 (Recommendation 8.7)

1 includes the reduction of intrastate terminating switched access rates to interstate
2 terminating switched access rate levels "in equal increments over a period of two to
3 four years."⁵

4 2. In Stage Two (2012-16), the FCC "should begin a staged transition of reducing per-
5 minute rates for intercarrier compensation."⁶ Under this Recommendation, the
6 FCC intends to begin the actual reduction of intrastate switched access rates to
7 interstate levels in equal increments over a period of time.

8 3. In Stage Three (2017-20), the FCC will complete "phasing out per-minute rates for
9 the origination and termination of telecommunications traffic."⁷

10 The FCC also intends to transition all high-cost universal support to broadband support
11 under its Connect America Fund.⁸ If the FCC is pressing for increased broadband deployment to
12 support the new paradigm of telecommunications, it makes little sense for a state to significantly
13 reform its AUSF to fund outdated legacy switched service.

14 Finally, the FCC is moving forward rapidly in implementing the recommendations of the
15 Plan. Indeed, the most recent FCC Key Broadband Action Agenda Items indicates that Notices of
16 Proposed Rulemakings will be issued in the Fourth Quarter of 2010 for Intercarrier Compensation,
17 USF Transformation and USF Contributions.⁹

18 **B. Lack of Compelling Need for Immediate Arizona-Specific Reform.**

19 The record here does not provide any compelling reason to expend scarce Commission
20 resources in addressing CLEC access charge reform at this time. The IXC's assert that reduced
21 access charges will eventually lead to reduced intrastate long distance rates. However, even the
22 IXC's acknowledge that it will take some period of time before access charge reductions are
23 reflected in those rates.¹⁰ Given the due process requirements and the nature of rulemaking, the

24 ⁵ NBP at 148.

25 ⁶ NBP at 149 (Recommendation 8.11).

26 ⁷ NBP at 150 (Recommendation 8.14).

27 ⁸ NBP at 140-42.

⁹ A copy of the Proposed 2010 Key Broadband Action Agenda Items is attached at Appendix A.

¹⁰ Tr. (Aron) at 298-99.

1 ACC is unlikely to implement changes to CLEC access rates more expeditiously than the schedule
2 the FCC is currently pursuing under the NBP. Thus, any specific access charge reform required by
3 this Commission likely would lag the FCC-mandated access charge reductions. And any
4 consumer benefits from this Commission's actions would trail even further behind.

5 There also has been no evidence presented that CLEC access rates are unjust and
6 unreasonable or are in need of review or change. In fact, the AT&T and Verizon intrastate
7 switched access rates are virtually identical to CLEC rates.¹¹ Further, intrastate access charges are
8 a diminishing source of revenue due to technological changes and the use of unregulated
9 alternatives for long distance calling.¹² Expending resources on reforming a declining revenue
10 source does not make sense.

11 Moreover, arguments pointing to the apparent discrepancy between interstate and intrastate
12 rates are misplaced because they fail to account for the difference in the *structure* of the two rate
13 schemes: (interstate switched access charges include the federal Subscriber Line Charge ("SLC"),
14 a rate element not instituted by the state of Arizona. When SLC is factored in, the federal
15 composite interstate access rate (rate applied to Qwest and CLECs) is approximately 3.57 cents per
16 minute, which is higher than Qwest's intrastate access rate in Arizona.

17 Further, the proposed mitigation of lost revenue will result in increased rates charged to
18 end users (to replace the lost access revenue) to the extent the retail market permits passing along
19 such increases, without any guarantee that the IXC's will pass through the corresponding access
20 charge reductions. As noted above, the IXC's acknowledge that it will take some time before the
21 reduced access charges begin to be reflected in retail long distance rates given the current pricing
22 structure and other factors. And the IXC's have resisted any requirement to provide proof of the
23 pass-through.

24 Finally, given that there is no pressing need for access reform, Joint CLEC's, who pale in
25 size and resources when compared with the large IXC's and ILEC's (AT&T, Verizon and Qwest)

26 ¹¹ Ex. JCLEC-1 (Denney Direct) at 19.

27 ¹² Ex. JCLEC-1 (Denney Direct) at 23.

1 prefer that this debate not take place in multiple venues simultaneously. As noted above, the FCC
2 is moving forward on addressing intercarrier compensation. While the large IXCs can afford to
3 press their concerns in every forum available to them in order to achieve additional earnings for
4 their shareholders (through access reduction), Joint CLECs prefer not to spend scarce financial
5 resources on multiple and potentially duplicative access proceedings. The cost of a proceeding to
6 review access charges and implement possible changes would likely far exceed the benefit of
7 doing so.¹³ In fact, CLECs will bear costs grossly disproportionate to their revenues compared to
8 other parties without any prospect of a benefit. From the perspective of Arizona's end-user
9 customers, the regulatory apparatus intended to protect them will transfer wealth from small LECs
10 and Arizona end users to the large IXCs. There is no pressing need to take any action on CLEC
11 access charges at this time and every reason not to.

12 C. Potential Inconsistent or Contrary Results.

13 It is questionable public policy to implement access reform at the state level in isolation
14 when a new national framework is imminent. By conducting a state specific docket, the
15 Commission risks adopting a plan – the creation of which will demand substantial investment of
16 time and resources by all participants – that is inconsistent with the federal scheme. These same
17 participants will ultimately have to go back and modify any adopted state plan to mirror the federal
18 framework. This does not appear to be the best use of scarce resources of the participants,
19 including Commission staff, at this time.

20 II. Procedural Issues Regarding Access Charge Reform.

21 Assuming the Commission presses forward in the face of active federal reform process,
22 there are due process and legal requirements that must be met before access charges can be
23 reduced. The professed goal of intrastate access charge reform is to *reduce* the current intrastate
24 access charge rates. At a minimum, the Commission should provide all affected carriers
25 appropriate notice and opportunity to be heard if it is going to reduce the carriers' intrastate access
26

27 ¹³ Ex. JCLEC-1 (Denney Direct) at 7.

1 charges. It also needs to ensure that new access charge rates are not confiscatory for a particular
2 carrier. These generic dockets are insufficient process for actually reducing rates.

3 **A. Reduction of Rates Requires Certain Process and Procedures.**

4 Arizona courts have held that, while a rate decision is legislative in nature, “the process
5 and procedures through which the Commission gathers and considers information or evidence
6 leading to that decision through its hearings is quasi-judicial in character, and cannot be analogized
7 to the legislative process” *See State ex. rel. Corbin v. Ariz. Corp. Comm’n*, 143 Ariz. 219,
8 223-24, 693 P.2d 362, 366-67 (App. 1984). The courts have further acknowledged that utilities
9 must be afforded due process protections when a ratemaking body determines the utility’s rates.
10 *See Residential Utility Consumer Office v. Ariz. Corp. Comm’n*, 199 Ariz. 588, 593, 20 P.3d 1169,
11 1174 (App. 2001); *Simms v. Round Valley Light & Power Co.*, 80 Ariz. 145, 149, 294 P.2d 378,
12 380 (1956). The reduction of a regulated carrier’s access charge rate is a ratemaking decision. If
13 the Commission intends to reduce access charge rates, an Arizona utility must have a full
14 opportunity to prove that the new rate is unjust, unreasonable or confiscatory. Moreover, a simple
15 rulemaking proceeding to address access charge reductions may not satisfy the Constitutional
16 requirements unless affected parties have an opportunity to seek a hearing on its specific
17 circumstances.

18 **B. Notice and Opportunity to be Heard for Affected Parties.**

19 Access charge reform ultimately is intended to impact all carriers in Arizona that charge for
20 intrastate switched access. If the Commission intends to reduce all intrastate access charge rates, it
21 must provide clear notice to all affected parties as to what those reductions will be. Here, the
22 Commission is only “investigating” the cost of telecommunications access. Indeed, the stated
23 purpose of this phase of the docket is to “allow the Commission to consider and make policy
24 determinations that may give rise to a rulemaking process and/or carrier specific proceedings.”
25 September 29, 2009 Procedural Order (Docket Nos. RT-00000H-97-137, T-00000D-00-0072) at 4.

26 Access charges cannot be reduced in this docket – certainly not at this point. Not all of the
27 affected carriers are parties to these generic, investigatory dockets. At this point, the Commission

1 has not set forth a specific proposal for intrastate access charges. Once the Commission has
2 decided how to proceed on access charge reform, it can provide notice to all affected carriers. A
3 rulemaking may satisfy this notice and opportunity to be heard, provided other due process and
4 constitutional requirements are satisfied by the proposed rules, as addressed above.

5 **III. Appropriate Policies for Access Charge Reform.**

6 Assuming the Commission presses forward in the face of the ongoing federal reform
7 process, there are certain key elements that should shape any specific access charge reform. The
8 Commission should direct that subsequent rule makings or other proceedings incorporate these
9 elements.

10 **A. Address Rural LEC Access Rates First.**

11 Any access reform is necessarily complicated. It is further complicated if the Commission
12 attempts to uniformly adjust rates for disparate groups with significantly different circumstances.
13 In order to be effective, any plan that addresses access reform should eventually consider each
14 individual carrier or similarly situated carriers. However, the Commission should address rural
15 ILECs first and then address large ILECs and CLECs in a later stage of this proceeding. Rural
16 carriers have stated that they are under the most pressure from loss of current intrastate access
17 revenues, and thus addressing this segment first would prioritize the timing of those concerns over
18 other carriers and be a more beneficial use of Commission resources. Moreover, many of the rural
19 carriers who are party to these proceedings are looking at recovering some lost access revenue
20 from the AUSF. These issues must be analyzed by the Commission to ensure that carriers are not
21 over burdening the AUSF and that surcharges remain fair and affordable for Arizona telephone
22 subscribers. The appropriate way to address these complex issues is to look at the rural ILECs first
23 by reviewing their rate structures to ensure that rate re-balancing results in relief for the rural
24 carriers on access revenue, but does not un-duly enlarge the AUSF to the point where surcharges
25 paid by non-rural telephone subscribers becomes an unfair burden. Indeed, the reform issues for
26 rural ILECs, including the interplay with the AUSF, was the focus of Commission Staff's
27

1 testimony.¹⁴

2 Rural providers have different issues and concerns than CLECs and mixing the two may
3 delay appropriate reform for rural access charges. Any rulemaking could provide shorter timelines
4 for rural carriers than for CLECs.

5 **B. Opportunity to Prove Rates for a Specific Carrier.**

6 Various parties suggest that the Commission reduce CLEC intrastate switched access rates
7 to either Qwest's current intrastate switched access rate or the CLEC's interstate switched access
8 rate. However, either rate is an arbitrary target for CLECs because neither was established based
9 on any carrier's cost, much less any CLEC's cost.¹⁵ Instead, these rates were the result of deals
10 reached between selected carriers, to their own benefit, without regard to cost, let alone carrier-
11 specific costs.¹⁶ Applying rates developed for the benefit of one specific group of carrier's (such
12 as large ILECs) to another group of carriers, such as CLECs, that typically were neither involved
13 in the development of those rates, nor could foresee that years later results of these negotiations
14 would potentially be forced upon them, is arbitrary and fundamentally unfair. Joint CLECs
15 believe that cost is the only fair benchmark.¹⁷ Yet, if this Commission does decide to mandate
16 CLEC access rate reductions with a target other than cost, then the Commission should establish a
17 benchmark rate equal to Qwest's intrastate switched access rates from the 1999 time period.¹⁸
18 This is the time period when most CLECs were entering the competitive market and was before
19 Qwest entered into negotiated, revenue neutral, access reductions for its own benefit as a result of
20 the price cap proceedings.¹⁹

21
22 ¹⁴ See Ex. S-1 (Shand Direct).

23 ¹⁵ Ex. JCLEC-1 (Denney Direct) at 8.

24 ¹⁶ Ex. JCLEC-1 (Denney Direct) at 8.

25 ¹⁷ See Ex. JCLEC-1 (Denney Direct) at 8. This recommendation is consistent with the position of
26 this Commission, which stated, "The Arizona Commission does not support the adoption of a
27 one-size-fits-all approach with respect to the establishment of reciprocal compensation rates.
The rates established by the state commission should reflect the costs of providing the service
for the particular carriers involved." Reply Comments of the Arizona Corporation
Commission, FCC Inter-carrier Compensation Docket, December 22, 2008, p. 15.

¹⁸ Ex. JCLEC-1 (Denney Direct) at 8.

¹⁹ Ex. JCLEC-1 (Denney Direct) at 8.

Moreover, should the Commission propose reducing CLEC intrastate access charge rates to Qwest's intrastate access charge rate (or to some other default rate), each CLEC should have an opportunity to prove a different intrastate rate is appropriate for that CLEC based on its specific circumstances.²⁰ Different carriers have different network facilities and operations, particularly when compared to the ILEC.²¹ A mandatory default rate based on Qwest's rate is arbitrary and may be confiscatory. To avoid such potential flaws, the Commission should provide a process for any CLEC that does not want to use the default or capped intrastate access rate. However, this process should be sufficiently streamlined to avoid extended, resource intensive proceedings that are not practical for many CLECs.

Although Staff offers up the potential for a carrier to file information demonstrating that it experiences higher costs of providing switch access services than the ILEC in hope of getting a higher rate,²² that option would be a resource intensive and lengthy option that is not practical for many CLECs. However, setting a cap with flexibility to establish rates modestly above the ILEC (such as the ILEC rate plus 15%) would recognize the differences in CLEC networks and costs, while avoiding the costly and likely contentious examination of individual CLEC costs. Allowing modes of rate variation could also reduce the effect of switched access reform on retail rates paid by Arizona consumers.

In sum, a carrier's own cost is the only reasonable benchmark for its access rates. Qwest's intrastate and interstate access rates were set based on negotiated considerations, and as such, are not based on Qwest's cost.²³ However, even if Qwest's rates *were* set based on Qwest's cost, these rates and cost *were not* CLECs (or rural ILECs) cost specific. As new entrants, CLECs (as well as small ILECs) lack the economies of scope and scale enjoyed by the Bell Companies, and therefore, have higher access cost than RBOCs. Reducing CLEC access rates to RBOC rates would impose economic harm on CLECs – carriers who could not make up for lost access

²⁰ See Ex. JCLEC-1 (Denney Direct) at 24-25.

²¹ Ex. JCLEC-1 (Denney Direct) at 26-30.

²² Ex. S-1 (Shand Direct) at 11.

²³ See Ex. JCLEC-1 (Denney Direct) at 20-21, 25.

1 revenues via increases in end user charges. Since the RBOC, Qwest, is the CLECs largest
2 competitor, the CLEC has limited ability to increase rates to end users when the RBOC is also not
3 increasing its rates. The Commission should not use Qwest's intrastate or/and interstate switched
4 access rates as *mandatory* benchmarks for other carriers.

5 **C. Transition Period for New Rates.**

6 Any access charge reform requires a transition period before new rates become effective.
7 If the Commission is going to mandate intrastate access charge reform and require rate reductions,
8 Joint CLECs request a gradual and predictable approach that extends over a number of years. An
9 extended transition period is necessary to minimize impacts on both carriers and their end-user
10 customers and allow carriers the time to alter business plans.²⁴ The task of altering business plans
11 would be more difficult for CLECs than many rural ILECs: CLECs, by definition, operate in retail
12 markets that are competitive.²⁵ As a result, CLECs have limited ability to individually increase
13 rates to their end users – in other words they are essentially price-takers in the market. In addition,
14 many CLECs have term agreements with virtually all of their end-user customers that limit the
15 CLECs ability to make rate changes, to the extent the retail market allows a CLEC the ability to
16 increase end user rates.²⁶ Finally, CLECs may also have term commitment contracts with their
17 wholesale long distance providers (service that CLECs package with their own local service and
18 resell to end users).²⁷ To accommodate the specifics of CLECs business, CLECs propose that if
19 they are mandated to reduce access rates, the Commission implement the first phase of mandated
20 changes *no earlier than* three years after notice to all CLEC carriers of a decision in this
21 consolidated docket and then the phase in of additional changes over a number of years. This will
22 provide the CLECs the ability to fully adjust business plans and contracts and attempt to mitigate
23 the damage that will be done by reducing CLEC revenue from switched access charges.

24
25
26 ²⁴ Ex. JCLEC-1 (Denney Direct) at 9.

²⁵ Ex. JCLEC-1 (Denney Direct) at 9.

²⁶ Ex. JCLEC-1 (Denney Direct) at 9, 52.

²⁷ Ex. JCLEC-1 (Denney Direct) at 9, 52.

1 There are many examples of gradual implementation of access reductions. For example, in
2 its FNPRM on Intercarrier compensation,²⁸ the FCC proposed a 10-year transition period of
3 intrastate switched access rates to the levels envisioned by the FCC.²⁹ In the *CLEC Access Charge*
4 *Order* and *CALLS Order* the FCC adopted a three-year transition period.³⁰ And the NBP includes
5 a transitional "glide path" for its intrastate access charge reform as well.³¹

6 **D. Opportunity to Replace Lost Revenue.**

7 If the Commission is going to mandate intrastate access charge reform and require rate
8 reductions, the Commission needs to determine whether it will provide carriers with an alternate
9 revenue source to offset changes in intrastate switched access. Although other parties propose that
10 reductions in intrastate switched access revenues be recovered from increases to end-user rates and
11 the Arizona Universal Service Fund ("AUSF"), these proposals are focused on revenue recovery
12 for rural ILECs. CLECs will be unlikely to draw from an access revenue recovery fund, such as a
13 USF, based on limitations typically put in place before a carrier is allowed access to the fund.³² It
14 does not make economic or public policy sense to migrate from a revenue source that could be
15 reduced due to competition to a revenue recovery mechanism that would likely never be reduced.³³

18 ²⁸ In the Matter of *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State*
19 *Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link Up*, WC Docket
20 No. 03-109, *Universal Service Contribution Methodology*, WC Docket No. 06-122,
21 *Numbering Resource Optimization*, CC Docket No. 99-200, *Implementation of the Local*
22 *Competition*, CC Docket No. 96-98, *Provisions in the Telecommunications Act of 1996*, CC
23 Docket No. 01-92, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No.
24 99-68, *Intercarrier Compensation for ISP-Bound Traffic IP-Enabled Services*, WC Docket No.
25 04-36, *Order On Remand And Report And Order And Further Notice Of Proposed*
26 *Rulemaking*, released November 5, 2008 ("FNPRM").

27 ²⁹ FNPRM, Appendix A, ¶¶192-196. While the FNPRM proposed a 10 year transition, it did not
mitigate the impact of proposed rate changes by smoothing out reductions over the transition.
Instead the FNPRM proposed the most substantial reductions in the first two years and minor
reductions thereafter. A 10 year transition of this nature does little to allow CLECs the ability
to rationally adjust and plan its business.

³⁰ See *CLEC Access Charge Order*, Appendix B "Final Rules," and 47 C.F.R. § 61.26(c) and See
CALLS Order, ¶¶30, 35 and 196.

³¹ NBP at 148-150

³² Ex. JCLEC-1 (Denney Direct) at 59-60.

³³ Ex. JCLEC-1 (Denney Direct) at 10.

Moreover, CLECs have limited ability to increase rates, unless rate increases are mandated for all CLEC competitors (including the ILECs) – a mandate which would be questionable in a competitive market.³⁴ First, CLECs are small carriers (when compared to Qwest, their incumbent competitor) operating in competitive end-user markets, and therefore, are *price takers in the end-user markets*.³⁵ As such, CLECs cannot simply offset ordered access rate reductions by a “revenue neutral” increase in their end-user local rates because their biggest competitor, Qwest, would not be subject to access rate reductions and therefore, would not be increasing local rates.³⁶ Competitive markets mean that all carriers (CLECs and the ILEC, Qwest) charge essentially the same “market rate.”³⁷ Second, CLECs serve primarily business markets and typically have long-term contracts with their business customers.³⁸ Because the prices that CLECs charge end-users are generally fixed for the term of the end-user agreement, CLECs may not be able to immediately increase end-user prices for existing term customers to compensate for lost access revenue.³⁹ Third, Commission rules do not allow CLECs to simply increase their end-user rates as they wish. Instead, CLECs end-user services are tariffed, and the rates are subject to maximum ceilings contained in these tariffs.⁴⁰ In order to increase the maximum ceiling, a CLEC would have to obtain permission from the Commission. Before the CLEC can file the application to obtain this permission, it must notify customers of the planned rate increase. In other words, even if the Commission permits an increase in maximum rates, obtaining the permission will take time given that the Commission may request additional information, and could schedule a hearing on the rate increase.⁴¹

Further, when considering the source of revenue that the Commission may make available to compensate for lost access revenue, the Commission should not guarantee revenue-neutral

³⁴ Ex. JCLEC-1 (Denney Direct) at 10, 60.

³⁵ Ex. JCLEC-1 (Denney Direct) at 9; Ex. JCLEC-2 (Denney Reply) at 32.

³⁶ Ex. JCLEC-2 (Denney Reply) at 32.

³⁷ Ex. JCLEC-2 (Denney Reply) at 32.

³⁸ Ex. JCLEC-1 (Denney Direct) at 52; Ex. JCLEC-2 (Denney Reply) at 32.

³⁹ Ex. JCLEC-1 (Denney Direct) at 9; Ex. JCLEC-2 (Denney Reply) at 32.

⁴⁰ See A.A.C. R14-2-1109.

⁴¹ See A.A.C. R14-2-1110.

1 offsets and should choose revenue sources that fluctuate in amount as need is verified. The
2 Commission should recognize that whether access revenue recovery is achieved directly through
3 end-user rate increases or a state access revenue recovery fund, ultimately end user customers in
4 Arizona are going to pay for access cost reductions that primarily benefit the large IXC's.

5 Finally, to the extent that the AUSF rules are amended to provide a source of replacement
6 revenues for lost access charge revenues, any access charge reductions should not be imposed until
7 the AUSF rulemaking is completed. Without proper timing, there will be a gap between lost
8 access charge revenues and the availability of replacement revenues under the AUSF.

9 **E. Ensure Access Charge Reductions Benefit Customers.**

10 Access charge reform is meaningless unless there is a benefit to end user customers. If
11 those benefits are to be diminished, then there must be other, comparable benefits from access
12 charge reform. Moreover, given that carriers should have an opportunity to replace any lost access
13 revenues, it is critical that end users customers receive the full benefit of access charge reductions.
14 If not, then end user customers may end up paying more as a result of the reform and the IXC's will
15 enjoy a windfall from their reduced expenses.

16 The record in this case raises significant concerns over whether the Commission will be
17 able to ensure that access charge reform will benefit consumers. Even the IXC's acknowledge that
18 intrastate access charge reductions will not be immediately passed through to consumers.⁴² The
19 IXC's are also fairly cryptic as to how and when (if ever) all Arizona consumers will see material
20 benefits from access charge reform.⁴³

21 Moreover, the actual IXC rate structure casts doubt on whether Arizona consumers would
22 see any relief if Arizona intrastate access rates are decreased. For example, because AT&T in-
23 state calling plans are priced at "generic" nationwide levels, a decrease in Arizona intrastate rates
24 would likely not translate into a rate decrease for Arizona long-distance customers of AT&T.⁴⁴

25 ⁴² Tr. (Aron) at 298-99.

26 ⁴³ See, e.g., Tr. (Aron) at 299-301 (discussing how ATT will reduce "connection fee" for some
consumers).

27 ⁴⁴ Ex. JCLEC-1 (Denney Direct) at 65.

1 Instead, AT&T could simply pocket the access cost savings obtained at the Arizona consumer
2 expense and use them to "subsidize" its operations in other states or simply flow through the
3 savings to its shareholders.

4 Finally, residential interstate toll rates have been increasing since 2003 in spite of interstate
5 access charge reform,⁴⁵ thus casting further doubt on any real benefits to Arizona consumers,
6 particularly residential consumers.

7 Joint CLECs agree with Commission Staff that any access charge reform should include a
8 mechanism to allow the Commission to confirm access charge reductions are reaching end user
9 consumers and are not simply padding the IXC's bottom line.⁴⁶ However, even the IXCs
10 acknowledge that such monitoring very difficult – if not impossible, then at least impractical and
11 potentially ineffective.⁴⁷ Without such monitoring, access charge reform may not be in the public
12 interest, particularly given the benefits that have resulted from the current intrastate access charge
13 structure.

14 **IV. Appropriate Policies for AUSF Reform.**

15 The Commission should carefully weigh the consequences, both for Arizona consumers
16 and for telephone competition in the state, of adjusting access rates down for all carriers, yet
17 allowing only some classes of carrier to recover "lost" revenue from the Arizona Universal Service
18 Fund. Any modification to the methodology for funding the AUSF also must be reviewed
19 carefully to ensure that no particular class of customers or carriers is bearing an undue burden.
20 Equitable allocation of AUSF costs is a key element to any AUSF reform. Funding the AUSF
21 based on intrastate revenue contributed by all sectors of the industry, i.e. ILEC, CLEC, Cable,
22 Wireless and VOIP providers, would be problematic. Creating a fund based on all carriers'
23 intrastate revenues has the effect of requiring all carriers in the state to subsidize IXCs'
24 customers.⁴⁸ In other words, it would change from a system where IXCs paid rural carriers when

25 ⁴⁵ Ex. JCLEC-2 (Denney Reply) at 37-38.

26 ⁴⁶ See Ex. S-1 (Shand Direct) at 13.

27 ⁴⁷ See Tr. (Aron) at 301-03.

⁴⁸ Ex. JCLEC-1 (Denney Direct) at 11.

IXC customers made calls to rural areas to one where CLEC Arizona end users would contribute a share to a fund for the benefit of IXC's customers to originate and terminate long distance calls in rural areas.⁴⁹ The Joint CLECs find this objectionable unless there is a clear showing that the AUSF is for the purpose of *universal service* (rather than a pure benefit of IXC's), and carriers drawing from the fund have demonstrated need as proposed by Qwest. Because IXC operations in a state tend to eclipse the IXC's CLEC operations, the proposal to shift to a numbers based contribution mechanism for USF would provide additional cost savings for IXC's at the further expense of Arizona end user customers.⁵⁰

V. Additional Issues Identified in Procedural Order.

The September 29, 2009 Procedural Order identified several discrete issues to address in this phase of the dockets. Joint CLECs have addressed most of those issues above.

A. Issue 4: Should carriers be permitted to contract for access rates that differ from their tariffed rates?

Although CLECs should be able to contract for access rates that differ from their tariff rates, if a CLEC chooses not to do so, then IXC's must be required to pay the tariffed rates. Failure to require IXC's to pay tariffed access rates would only allow IXC's to exploit their market power in the access market.⁵¹ It does not make sense to mandate the access rates carriers can charge, but fail to mandate that IXC's must pay these rates.

B. Issues 7 – 10. AUSF Process Issues.

The AUSF should *not be a replacement* for loss of access revenue stemming from the reduction in access rates. Funding should be based on public interest need and limited to cases of high cost and low income support. Line extensions should not be funded to the extent the cost of their construction is recovered through the "special constructions" tariff provisions. In order to receive funding, a carrier should show the need. Before a carrier is allowed to draw from the

⁴⁹ Ex. JCLEC-1 (Denney Direct) at 11.

⁵⁰ Ex. JCLEC-1 (Denney Direct) at 11.

⁵¹ Ex. JCLEC-1 (Denney Direct) at 55-56.

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 AUSF, there should be a demonstration of need. The carrier-recipient of the fund should also be
2 required to periodically refresh the data used to justify support in order to demonstrate to the
3 Commission that it continues to need AUSF support.

4 **VI. If the Commission Reforms Intrastate Access Charges, It Should Also Establish the**
5 **Terminating Rate for Intrastate, IntraMTA Wireless Calls.**

6 Wireless intraMTA traffic in Arizona is by an order of a magnitude larger than intrastate
7 switched access traffic of ILECs and CLECs taken together. The Commission should clarify that
8 local exchange carriers are entitled to compensation for intraMTA traffic from wireless carriers,
9 and set default compensation rates identical to the rate established for CLECs for terminating
10 intrastate switched access. This solution would be consistent with the process used today to set the
11 rates for wireless termination of interMTA traffic, for which wireless carriers pay interstate
12 switched access rates.⁵²

13 **Conclusion**

14 Joint CLECs believe that it is both premature and unnecessary for the Commission to
15 expend further resources on intrastate access charge reform in light of the ongoing FCC activity
16 regarding intercarrier compensation and universal service. If the Commission presses forward
17 with access charge reform at this time, it should adopt policies that will not harm CLECs or
18 undermine competition.

19 RESPECTFULLY SUBMITTED this 9th day of July, 2010.

20 **ROSHKA DEWULF & PATTEN, PLC**

21
22 By 


23 Michael W. Patten
24 400 East Van Buren Street, Suite 800
25 Phoenix, Arizona 85004
26 (602) 256-6100

27 ⁵² Ex. JCLEC-1 (Denney Direct) at 23.

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

Attorneys for Eschelon Telecom of Arizona, Inc.; Mountain
Telecommunications, Inc.; Electric Lightwave, LLC; and
McLeodUSA Telecommunications Services, Inc. d/b/a
PAETEC Business Services.

and

By 
Joan S. Burke
Law Office of Joan S. Burke
1650 North First Avenue
Phoenix, Arizona 85003
(602) 535-0396

Attorney for tw telecom of arizona llc; and XO
Communications Services, Inc.

ORIGINAL and 15 COPIES of the
foregoing filed this 9th day of
July 2010 with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

ORIGINAL and 15 COPIES of the
foregoing filed this 9th day of
July 2010 with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

COPIES of the foregoing mailed/
emailed this 9th day of July 2010 to:

Dan Pozefsky
Residential Utilities Consumer Office
1110 West Washington, Suite 220
Phoenix, Arizona 85007
dpozefsky@azruco.gov

Norm Curtright
Qwest Corporation
20 East Thomas Road, 16th Floor
Phoenix, Arizona 85012

1 Isabelle Salgado
2 AT&T Nevada
3 645 E. Plumb Lane, B132
4 P.O. Box 11010
5 Reno, NV 89520
6 dan.foley@att.com
7 gcl831@att.com

8 Joan S. Burke
9 Osborn Maledon, PA
10 1650 North First Avenue
11 Phoenix, Arizona 85003
12 joan@jsburkelaw.com

13 Lyndall Nipps
14 Vice President, Regulatory
15 Time Warner Telcom
16 845 Camino Sur
17 Palm Springs, CA 92262
18 Lyndall.Nipps@twtelecom.com

19 Dennis D. Ahlers
20 Associate General Counsel
21 Eschelon Telecom, Inc.
22 6160 Golden Hills Drive
23 Golden Valley, MN 55416
24 ddahlers@eschelon.com

25 Thomas Campbell
26 Michael Hallam
27 Lewis and Roca LLP
40 North Central
Phoenix, Arizona 85004
tcampbell@lrlaw.com
mhallam@lrlaw.com

Rex Knowles
Executive Director — Regulatory
XO Communications, Suite 1000
111 E. Broadway
Salt Lake City, UT 84111
Rex.knowles@xo.com

Charles H. Carrathers, III
General Counsel, South Central Region
Verizon, Inc.
HQE03H52
600 Hidden Ridge
Irving, Texas 75015-2092
chuck.carrathers@verizon.com

Thomas W. Bade, President
Arizona Dialtone, Inc.
717 W. Oakland St.
Chandler, Arizona 85226
Tombade@arizonadialtone.com

Brad VanLeur, President
OrbitCom, Inc.
1701 N. Louise Ave.
Sioux Falls, SD 57107
bvanleur@svtv.com

Karen E. Nally
Moyes Sellers & Sims, Ltd.
1850 North Central Ave, Ste 1100
Phoenix, Arizona 85004
kenally@lawms.com

Nathan Glazier
Regional Manager
Alltel Communications, Inc.
4805 E. Thistle Landing Dr.
Phoenix, Arizona 85044
Nathan.glazier@alltel.com

Mark A. DiNunzio
Cox Arizona Telcom, LLC
1550 West Deer Valley Road
MS DV3-16, Bldg C
Phoenix, AZ 85027
mark.dinunzio@cox.com

ROSKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 William A. Haas
2 Deputy General Counsel
3 McLeodUSA Telecommunications Services,
4 1 Martha's Way
5 Hiawatha, Iowa 52233
6 william.haas@paetec.com

7 Chris Rossie
8 President, Local 7019
9 Communication Workers of America
10 11070 N. 24th Avenue
11 Phoenix, Arizona 85029

12 Greg L. Rogers
13 Senior Corporate Counsel
14 Level 3 Communications, LLC
15 1025 Eldorado Boulevard
16 Broomfield, Colorado 80021

17 By



Jane Rodda, Esq.
Administrative Law Judge, Hearing Division
Arizona Corporation Commission
400 West Congress
Tucson, Arizona 85701

Ms. Janice Alward, Esq.
Chief Counsel
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Steve Olea, Esq.
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

APPENDIX

"A"

Proposed 2010 Key Broadband Action Agenda Items*

	Q2 2010 (CY)	Q3 2010 (CY)	Q4 2010 (CY)
Promote World-Leading Mobile Broadband Infrastructure and Innovation	Mobile Roaming Order and FNPRM (WCB)	AWS Bands Analysis (WCB, OET)	AWS Potential Order (WCB, OET)
	D Block Order/NPRM (WCB, PSHSB) [Also in Public Safety]		Secondary Markets Internal Review (WCB)
	Launch Strategic Spectrum Plan and Triennial Assessment (WCB, OET, OSP)	Spectrum Sharing/Wireless Backhaul NPRM/NOI (WCB, OET)	Spectrum Dashboard 2.0 (WCB, OET, PSHSB, MB, IB)
	2.3 GHz WCS/SDARS Order (OET, WCB, IB)	Oppor. Use of Spectrum NPRM (OET, WCB, IB, MB, PSHSB)	Recommendation re: Contiguous Unlicensed Spectrum Proceeding (OET, WCB)
		TV White Spaces Opinion & Order (OET, MB, WCB)	Experimental Licensing NPRM (OET)
		MSS NPRM (OET, IB, WCB)	
		Broadcast TV Spectrum Innovation NPRM (OET, MB, WCB)	
	USF Reform NPRM and NOI (WCB, WCB)		
	Lifeline/Low-Income Joint Board Referral Order (WCB, WCB)	Mobility Fund NPRM (WCB, WCB)	Spectrum on Tribal Lands NPRM (WCB, WCB)
	E-Rate FY2011 NPRM (WCB)		
Accelerate Universal Broadband Access and Adoption	USF Merger Commitments Order (WCB, WCB)	E-Rate FY2011 Order (WCB)	
	Lifeline Pilot Roundtable (WCB, WCB)	Rural Health Care Reform NPRM (WCB)	USF Transformation NPRM (WCB, WCB)
	FCC/FDA Workshop and PN on Converged Devices (OET)	Lifeline Flexibility NPRM (WCB, WCB)	Intercarrier Compensation NPRM (WCB, WCB)
	Launch FCC Office of Native American Affairs (CGB)	Establish Accessibility and Innovation Forum (CGB, WCB, WCB)	USF Contributions NPRM (WCB, WCB)
	FCC-Native Nations Broadband Task Force (CGB)	Real-Time Text NOI (CGB, WCB, WCB, OET)	Real-Time Text NPRM (CGB, WCB, WCB, OET)
			Internet Video and Device Accessibility NOI (CGB, WCB, WCB, MB)
	Mobile Wireless Competition Report (WCB, OSP)	Interconnection Clarification Order (WCB)	
	Pole Attachments Order and FNPRM (WCB)	Rights-of-Way Task Force (CGB, WCB)	Small Business Broadband & Wholesale Comp. NOI (WCB)
	Small Business Broadband & Wholesale Comp. PN (WCB)		
	Special Access Workshop (WCB, WCB, OSP)		Special Access NPRM (WCB, WCB, OSP)
Foster Competition and Maximize Consumer Benefits Across the Broadband Ecosystem	CableCARD NPRM (MB, OET)		
	Smart Video Devices NOI (MB, OET)		Smart Video Devices NPRM (MB, OET)
	Launch Tech. Adv. Grp. on Speed & Perf. (CGB, OET, WCB)		
	Launch Speed and Performance Measurement Program (CGB, WCB, WCB, OET)		Transparency & Disclosure NPRM (CGB, WCB, WCB, OET)
			Broadband Data NPRM (WCB, WCB, OSP)
	Public Safety Roaming & Priority Access NPRM (WCB, PSHSB)		
	D Block Order/NPRM (WCB, PSHSB) [Also in Mobile]		
	700 MHz Waiver Petitions (PSHSB, WCB, OET)		
	ERIC Public Safety Interoperability Order (PSHSB)		
	Cybersecurity Certification NOI (PSHSB, WCB, OET, WCB)		
Advance Robust and Secure Public Safety Communications Networks	Survivability NOI (PSHSB, OET, WCB, WCB)		
	Serv. Outage & Homeland Security Workshop (PSHSB, OET, WCB, WCB, IB)		

Wireless Telecommunications Bureau (WCB)	Wireline Competition Bureau (WCB)	Office of Engineering and Technology (OET)	Media Bureau (MB)	Consumer & Governmental Affairs Bureau (CGB)	Public Safety & Homeland Security Bureau (PSHSB)

* This document reflects only proposed FCC actions, not those of other government agencies, and is not exhaustive of all 2010 FCC actions. The location and timing of actions in this document represents a series of targets that may be adjusted to respond to changing conditions as appropriate; items that span quarters are expected to occur late in the earlier quarter, or early in the later quarter. Does not include initiatives discussed in Agenda from Q1 2010 and earlier (E-rate Community Use Order, Rural Health Care Pilot Program Extension Order, Spectrum Dashboard Beta, and Tower Siting Declaratory Ruling).